

REMARKS

The only outstanding issue remaining in the instant application is the Examiner's rejection for alleged obviousness-type double-patenting over commonly owned U.S. Patent Nos. 6,426,342, 6,610,681, and 6,627,625. Along with the Response filed on August 7, 2009, Applicant had filed a Terminal Disclaimer (TD) under 37 C.F.R. § 1.321(b) disclaiming any term beyond the expiration date of the three commonly owned patents cited by the Examiner (U.S. Patent Nos. 6,426,342, 6,610,681, and 6,627,625), all of which have the same expiration date. The TD resolves all remaining issues and places the application in condition for allowance.

In the Advisory Action issued on August 19, 2009, the Examiner states that Applicant's Response filed on August 7, 2009 fails to place the instant application in condition for allowance. The Examiner did not accept nor enter the after-final TD filed with Applicant's Response, contending that Applicant's TD cannot be considered as being timely filed. The Examiner's rationale is that the double-patenting rejections had been set forth in previous Office Actions, and that Applicant did not provide a reason or explanation as to why the TD was not earlier presented.

Applicant respectfully but strongly disagrees with the Examiner's reasoning. In regard to the timeliness of filing the TD, Applicant submits that arguments against the rejection for alleged obviousness-type double-patenting were presented by Applicant throughout the course of prosecution. Applicant's filing of the TD with the Response of August 7, 2009 should in no way be construed as an admission by Applicant of the propriety of the rejection for alleged double-patenting, but that it was done in good faith and merely to advance the application toward allowance and issuance. Accordingly, Applicant believes that the TD should have been entered. By entering the TD, all outstanding issues would have been resolved. Instead, by not entering the TD, the Examiner has unnecessarily drawn out the prosecution of the instant application.

Nonetheless, Applicant herein requests continued examination under 37 C.F.R. § 1.114 in the instant application for the purpose of entering the TD. Accordingly, submitted with the RCE is a new Terminal Disclaimer under 37 C.F.R. § 1.321(b) disclaiming any term beyond the expiration date of the three commonly owned patents cited by the Examiner (U.S. Patent Nos. 6,426,342, 6,610,681, and 6,627,625). Applicant believes that the filing of this TD resolves all outstanding issues. The claims of the instant application are now in condition for allowance leading to issuance. Such action is respectfully requested.

Respectfully submitted,  
BARNES & THORNBURG LLP

A handwritten signature in cursive script, appearing to read "Richard D. Conard", is written over a horizontal line.

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